

AMENDED IN SENATE AUGUST 4, 2008

AMENDED IN SENATE JULY 25, 2007

AMENDED IN SENATE JULY 5, 2007

AMENDED IN SENATE JUNE 25, 2007

AMENDED IN SENATE JUNE 19, 2007

AMENDED IN ASSEMBLY APRIL 23, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

**No. 354**

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**Introduced by Assembly Member Hernandez**

February 14, 2007

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*An act to amend Section 6716 of, and to add Sections 6717.1, 6717.2, 6717.3, 6717.6, 6717.7, and 6717.9 to, the Labor Code, relating to occupational safety and health. An act to amend Sections 7150.10 and 7150.50 of the Health and Safety Code, relating to anatomical gifts.*

### LEGISLATIVE COUNSEL'S DIGEST

AB 354, as amended, Hernandez. ~~Occupational safety and health: lead-related construction registration program.~~ *Anatomical gifts: pacemakers.*

*Existing law, the Uniform Anatomical Gift Act, regulates the making of anatomical gifts and the disposition of donated bodies and body parts, as specified. The act defines an anatomical gift as a donation of all or part of a human body to take effect after the donor's death for the purpose of transplantation, therapy, research, or education. The*

*act also specifies the persons and entities to which an anatomical gift may be made.*

*This bill would revise the definition of an anatomical gift to additionally include a donation of a pacemaker for the purpose of reconditioning, and would authorize a person who reconditions pacemakers to receive the donation.*

~~Existing law mandates the proposal, review, and adoption of standards and requirements to protect the health and safety of employees who engage in lead-related construction work.~~

~~This bill would establish a program to register employers and contractors who perform lead-related construction work, to be administered by the Division of Occupational Safety and Health. It would require payment of an application fee for this registration in an amount to be determined by the division, would require annual renewal of the registration with the payment of a renewal fee, and would provide that all these fees are to be deposited into a fund, with the moneys in this fund, upon appropriation, to be used for the purposes of this registration program. It would require an employer or contractor to register to perform lead-related construction work, which would be defined for these purposes. It would provide procedures for employers and contractors to dispute denials of registration applications by the Division of Occupational Safety and Health, including providing for appeals to the Director of Industrial Relations. It would provide for monetary penalties for violations of its provisions enforceable by the division pursuant to specified procedures, with specified defenses available. Application information would be provided by employers and contractors under the penalty of perjury.~~

Vote: majority. Appropriation: no. Fiscal committee: *yes-no*.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 7150.10 of the Health and Safety Code*
- 2     *is amended to read:*
- 3     7150.10. (a) As used in this chapter, the following terms have
- 4     the following meanings:
- 5     (1) "Adult" means an individual who is at least 18 years of age.
- 6     (2) "Agent" means an individual who meets either of the
- 7     following criteria:

1 (A) He or she is authorized to make health care decisions on  
2 the principal's behalf by a power of attorney for health care.

3 (B) He or she is expressly authorized to make an anatomical  
4 gift on the principal's behalf by any other record signed by the  
5 principal.

6 (3) "Anatomical gift" means a donation of all or part of a human  
7 body to take effect after the donor's death for the purpose of  
8 transplantation, therapy, research, ~~or~~ education, *or a donation of*  
9 *a pacemaker for the purpose of reconditioning.*

10 (4) "Decedent" means a deceased individual whose body or part  
11 is or may be the source of an anatomical gift. The term includes a  
12 stillborn infant and, subject to restrictions imposed by law other  
13 than this chapter, a fetus.

14 (5) "Disinterested witness" means a witness other than the  
15 spouse, child, parent, sibling, grandchild, grandparent, or guardian  
16 of the individual who makes, amends, revokes, or refuses to make  
17 an anatomical gift, or another adult who exhibited special care and  
18 concern for the individual. The term does not include a person to  
19 which an anatomical gift could pass under Section 7150.50.

20 (6) "Document of gift" means a donor card or other record used  
21 to make an anatomical gift. The term includes a statement recorded  
22 on the Donate Life California Organ and Tissue Donor Registry  
23 or other donor registry.

24 (6.5) "Domestic partner" means a person who is registered under  
25 Section 297 of the Family Code, or otherwise recognized under  
26 the law of any state as a domestic partner.

27 (7) "Donor" means an individual whose body or part is the  
28 subject of an anatomical gift.

29 (8) "Donor registry" means a database that contains records of  
30 anatomical gifts and amendments to or revocations of anatomical  
31 gifts, including, but not limited to, the Donate Life California  
32 Organ and Tissue Donor Registry.

33 (9) "Driver's license" means a license or permit issued by the  
34 Department of Motor Vehicles to operate a vehicle, whether or  
35 not conditions are attached to the license or permit.

36 (10) "Eye bank" means a person that is licensed, accredited, or  
37 regulated under federal or state law to engage in the recovery,  
38 screening, testing, processing, storage, or distribution of human  
39 eyes or portions of human eyes.

1 (11) “Guardian” means a person appointed by a court to make  
2 decisions regarding the support, care, education, health, or welfare  
3 of an individual. The term does not include a guardian ad litem.

4 (12) “Hospital” means a facility licensed as a hospital under the  
5 law of any state or a facility operated as a hospital by the United  
6 States, a state, or a subdivision of a state.

7 (13) “Identification card” means an identification card issued  
8 by the Department of Motor Vehicles.

9 (14) “Know” means to have actual knowledge.

10 (15) “Minor” means an individual who is under 18 years of age.

11 (16) “Organ procurement organization” means a person  
12 designated by the Secretary of the United States Department of  
13 Health and Human Services as an organ procurement organization.

14 (17) “Parent” means a parent whose parental rights have not  
15 been terminated.

16 (18) “Part” means an organ, an eye, or tissue of a human being.  
17 The term does not include the whole body.

18 (19) “Person” means an individual, corporation, business trust,  
19 estate, trust, partnership, limited liability company, association,  
20 joint venture, public corporation, government or governmental  
21 subdivision, agency, or instrumentality, or any other legal or  
22 commercial entity.

23 (20) “Physician” means an individual authorized to practice  
24 medicine or osteopathy under the law of any state.

25 (21) “Procurement organization” means an eye bank, organ  
26 procurement organization, or tissue bank.

27 (22) “Prospective donor” means an individual who is dead or  
28 near death and has been determined by a procurement organization  
29 to have a part that could be medically suitable for transplantation,  
30 therapy, research, or education. The term does not include an  
31 individual who has made a refusal.

32 (23) “Reasonably available” means able to be contacted by a  
33 procurement organization, without undue effort, and willing and  
34 able to act in a timely manner consistent with existing medical  
35 criteria necessary for the making of an anatomical gift.

36 (24) “Recipient” means an individual into whose body a  
37 decedent’s part has been, or is intended to be, transplanted.

38 (25) “Record” means information that is inscribed on a tangible  
39 medium or that is stored in an electronic or other medium and is  
40 retrievable in perceivable form.

1 (26) “Refusal” means a record created under Section 7150.30  
2 that expressly states an intent to bar other persons from making  
3 an anatomical gift of an individual’s body or part.

4 (27) “Sign” means, to do either of the following with the present  
5 intent to authenticate or adopt a record:

6 (A) Execute or adopt a tangible symbol.

7 (B) Attach to or logically associate with the record an electronic  
8 symbol, sound, or process.

9 (28) “State” means a state of the United States, the District of  
10 Columbia, Puerto Rico, the United States Virgin Islands, or any  
11 territory or insular possession subject to the jurisdiction of the  
12 United States.

13 (29) “Technician” means an individual determined to be  
14 qualified to remove or process parts by an appropriate organization  
15 that is licensed, accredited, or regulated under federal or state law.  
16 The term includes an enucleator.

17 (30) “Tissue” means a portion of the human body other than an  
18 organ or an eye. The term does not include blood, unless a blood  
19 sample is needed for the purpose of research or education.

20 (31) “Tissue bank” means a person that is licensed, accredited,  
21 or regulated under federal or state law to engage in the recovery,  
22 screening, testing, processing, storage, or distribution of tissue.

23 (32) “Transplant hospital” means a hospital that furnishes organ  
24 transplants and other medical and surgical specialty services  
25 required for the care of transplant patients.

26 (b) This chapter applies to an anatomical gift or amendment to,  
27 revocation of, or refusal to make an anatomical gift, whenever  
28 made.

29 *SEC. 2. Section 7150.50 of the Health and Safety Code is*  
30 *amended to read:*

31 7150.50. (a) An anatomical gift may be made to any of the  
32 following persons named in the document of gift:

33 (1) A hospital, accredited medical school, dental school, college,  
34 university, or organ procurement organization, for research or  
35 education.

36 (2) Subject to subdivision (b), an individual designated by the  
37 person making the anatomical gift if the individual is the recipient  
38 of the part.

39 (3) An eye bank; or tissue bank.

1     (4) *In the case of a pacemaker, a person who reconditions*  
2     *pacemakers.*

3     (b) If an anatomical gift to an individual under paragraph (2)  
4     of subdivision (a) cannot be transplanted into the individual, the  
5     part passes in accordance with subdivision (g) in the absence of  
6     an express, contrary indication by the person making the anatomical  
7     gift.

8     (c) If an anatomical gift of one or more specific parts, or of all  
9     parts, is made in a document of gift that does not name a person  
10    described in subdivision (a) but identifies the purpose for which  
11    an anatomical gift may be used, all of the following rules shall  
12    apply:

13    (1) If the part is an eye and the gift is for the purpose of  
14    transplantation or therapy, the gift passes to the appropriate eye  
15    bank.

16    (2) If the part is tissue and the gift is for the purpose of  
17    transplantation or therapy, the gift passes to the appropriate tissue  
18    bank.

19    (3) If the part is an organ and the gift is for the purpose of  
20    transplantation or therapy, the gift passes to the appropriate organ  
21    procurement organization as custodian of the organ.

22    (4) If the part is an organ, an eye, or tissue and the gift is for  
23    the purpose of research or education, the gift passes to the  
24    appropriate procurement organization.

25    (d) For the purpose of subdivision (c), if there is more than one  
26    purpose of an anatomical gift set forth in the document of gift but  
27    the purposes are not set forth in any priority, the gift shall be used  
28    for transplantation or therapy, if suitable. If the gift cannot be used  
29    for transplantation or therapy, the gift may be used for research or  
30    education.

31    (e) If an anatomical gift of one or more specific parts is made  
32    in a document of gift that does not name a person described in  
33    subdivision (a) and does not identify the purpose of the gift, the  
34    gift shall be used only for transplantation or therapy, and the gift  
35    passes in accordance with subdivision (g).

36    (f) If a document of gift specifies only a general intent to make  
37    an anatomical gift by words such as “donor,” “organ donor,” or  
38    “body donor,” or by a symbol or statement of similar import, the  
39    gift may be used for transplantation, therapy, research, or education,  
40    and the gift passes in accordance with subdivision (g).

(g) For purposes of subdivisions (b), (e), and (f) all of the following rules shall apply:

(1) If the part is an eye, the gift passes to the appropriate eye bank.

(2) If the part is tissue, the gift passes to the appropriate tissue bank.

(3) If the part is an organ, the gift passes to the appropriate organ procurement organization as custodian of the organ.

(h) An anatomical gift of an organ for transplantation or therapy, other than an anatomical gift under paragraph (2) of subdivision (a), passes to the organ procurement organization as custodian of the organ.

(i) If an anatomical gift does not pass pursuant to subdivisions (a) to (h), inclusive, or the decedent's body or part is not used for transplantation, therapy, research, or education, custody of the body or part passes to the person under obligation to dispose of the body or part.

(j) A person shall not accept an anatomical gift if the person knows that the gift was not effectively made under Section 7150.20 or 7150.45 or if the person knows that the decedent made a refusal under Section 7150.30 that was not revoked. For purposes of this subdivision, if a person knows that an anatomical gift was made on a document of gift, the person is deemed to know of any amendment or revocation of the gift or any refusal to make an anatomical gift on the same document of gift.

(k) Except as otherwise provided in paragraph (2) of subdivision (a), nothing in this chapter affects the allocation of organs for transplantation or therapy.

~~SECTION 1. Section 6716 of the Labor Code is amended to read:~~

~~6716. For the purposes of Sections 6717 to 6717.8, inclusive, "lead-related construction work" means any of the following:~~

~~(a) Any construction, alteration, painting, demolition, salvage, renovation, repair, or maintenance of any building or structure, including preparation and cleanup, that, by using or disturbing lead-containing material or soil, may result in significant exposure of employees to lead as determined by the standard adopted pursuant to Section 6717.~~

~~(b) The transportation, disposal, storage, or containment of materials containing lead on site or at a location at which~~

1 construction activities are performed. “Lead-related construction  
2 work” as used in Sections 6717 to 6717.8, inclusive, does not  
3 include any activity related to the manufacture or mining of lead  
4 or the installation or repair of automotive materials containing  
5 lead.

6 SEC. 2. Section 6717.1 is added to the Labor Code, to read:

7 6717.1. (a) Any employer or contractor who will be engaging  
8 in lead-related construction work, as defined in paragraphs (1) to  
9 (7), inclusive, of subdivision (a) of Section 1532.1 of Title 8 of  
10 the California Code of Regulations as adopted pursuant to Section  
11 6717, or any successor to those provisions, shall apply for and  
12 obtain a registration from the division prior to the commencement  
13 of any such work, except as follows:

14 (1) For purposes of the registration under this section,  
15 “lead-related construction work” means and refers to work  
16 performed in the removal, demolition, or abatement of existing  
17 materials and does not include the installation of new, previously  
18 unused construction materials.

19 (2) An employer or contractor is not required to obtain  
20 registration under this section to work on a job in which the amount  
21 of lead-containing materials to be disturbed by the employer or  
22 contractor is less than 100 square or linear feet, whichever is  
23 applicable, or in which the amount of lead in the materials to be  
24 disturbed is less than 0.5% by weight or 1.0 milligram per square  
25 centimeter of surface area.

26 (b) An application for registration shall be accompanied by an  
27 application fee in an amount to be estimated by the division to  
28 equal the per-applicant cost of the registration program in excess  
29 of the amount of moneys collected in renewal fees assessed  
30 pursuant to Section 6717.3. These fees and renewal fees collected  
31 pursuant to Section 6717.3 shall be deposited into the Lead  
32 Contractor Registration Fund, which is hereby created. All moneys  
33 in this fund shall be available, upon appropriation, for the purpose  
34 of investigating, registering, and renewing registrations for  
35 lead-related construction work.

36 (c) The application shall include all of the following information  
37 and attachments with a declaration stating that the information,  
38 attachments, and any other information provided by the applicant  
39 are genuine, true, and correct to the best of the applicant’s  
40 knowledge:



1 ~~(1) Proof of a valid California contractor's license.~~

2 ~~(2) Proof of workers' compensation insurance.~~

3 ~~(3) Proof of sufficient employee health insurance coverage for~~  
4 ~~any medical surveillance costs imposed by Section 1532.1 of Title~~  
5 ~~8 of the California Code of Regulations, or any successor to that~~  
6 ~~regulation.~~

7 ~~(4) Proof that all training and certification requirements for~~  
8 ~~employees engaged in lead-related work pursuant to Section 1532.1~~  
9 ~~of Title 8 of the California Code of Regulations, or any successor~~  
10 ~~to that regulation, have been completed.~~

11 ~~(5) Such other information and attachments as the division may~~  
12 ~~deem necessary to evaluate the health and safety of the proposed~~  
13 ~~employment and place of employment.~~

14 ~~(d) If, in a declaration required by subdivision (c), a declarant~~  
15 ~~willfully states as true any material fact he or she knows to be~~  
16 ~~false, that person shall be subject to a civil penalty of up to ten~~  
17 ~~thousand dollars (\$10,000). Any public prosecutor may bring a~~  
18 ~~civil action to impose the civil penalty. The application for~~  
19 ~~registration shall include a statement advising declarants of the~~  
20 ~~penalty authorized under this provision.~~

21 ~~(e) Within 15 business days after the receipt of an application,~~  
22 ~~the division shall notify the registration applicant either that the~~  
23 ~~application is complete or what is necessary to complete the~~  
24 ~~application. The division shall notify the applicant that the~~  
25 ~~application is granted, or that it was denied with reasons for that~~  
26 ~~denial specified in the notice, within 30 business days after the~~  
27 ~~submission of a completed application.~~

28 SEC. 3. ~~Section 6717.2 is added to the Labor Code, to read:~~

29 ~~6717.2. (a) The division shall deny an application for~~  
30 ~~lead-related construction work registration if, based on available~~  
31 ~~facts, including the information provided by the employer or~~  
32 ~~contractor in the application for registration, the employer or~~  
33 ~~contractor has failed to show that the conditions, practices, means,~~  
34 ~~methods, operations, or processes used or proposed to be used will~~  
35 ~~provide a safe and healthful place of employment. The division~~  
36 ~~shall consider the employer's or contractor's compliance history~~  
37 ~~with the division. The division shall immediately notify the~~  
38 ~~employer or contractor, in writing, of the reasons for a denial of~~  
39 ~~an application for registration, and shall send a copy of that~~  
40 ~~notification to the director.~~

~~(b) An employer or contractor may appeal the denial by the division of an application for registration to the director. The director or his or her designee shall select a place convenient to the parties for the hearing, which shall be held within two working days after the receipt of the employer's or contractor's appeal. The employer or contractor shall have the burden of establishing that it qualifies for registration.~~

~~(c) The director or his or her authorized designee shall preside over the hearing, which shall be open to employees and any employee representative or representatives. The employer or contractor shall notify the employees or employee representative or representatives of any appeal hearing a reasonable time prior to the hearing. Proof of this notification by the employer or contractor shall be provided at the hearing.~~

~~(d) The director's decision after an appeal hearing concerning an application for registration shall be final unless a request for rehearing is filed with the director within 10 days after the date the director's decision is rendered, or unless the decision is appealed to the courts as provided by law.~~

~~SEC. 4. Section 6717.3 is added to the Labor Code, to read:~~

~~6717.3. (a) A registration for lead-related construction work shall be valid for one year after the date of issuance by the division.~~

~~(b) An employer or contractor engaged in lead-related construction work shall annually file an application to renew its registration with the division at least 30 days before the expiration date of its current registration along with a renewal fee to be established by the division. The renewal fee shall be deposited into the Lead Contractor Registration Fund established by subdivision (b) of Section 6717.1.~~

~~SEC. 5. Section 6717.6 is added to the Labor Code, to read:~~

~~6717.6. (a) The division may hold a hearing to determine if a violation of a duty specified in Section 6717.1 has occurred. Notice shall be given and the hearing conducted in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2, Government Code). The division shall have all the powers granted by that chapter. When the division determines on the basis of the hearing that a violation has occurred, it shall order the violator to pay monetary penalties as follows:~~

1     ~~(1) Five thousand dollars (\$5,000) for a first finding of a~~  
2     ~~violation for failing to register as required by Section 6717.1.~~

3     ~~(2) Twenty thousand dollars (\$20,000) for a second or~~  
4     ~~subsequent finding of a violation of Section 6717.1.~~

5     ~~(b) It is a defense to a proceeding under this section if the owner,~~  
6     ~~contractor, employer, public agency, or agent thereof acted under~~  
7     ~~a belief that Section 6717.1 was inapplicable because no lead was~~  
8     ~~present and proves, by a preponderance of the evidence, that he~~  
9     ~~or she made a reasonable effort to determine whether lead was~~  
10    ~~present.~~

11    ~~(c) The penalties under this section shall be in addition to any~~  
12    ~~other penalty or remedy provided by law.~~

13    ~~SEC. 6.— Section 6717.7 is added to the Labor Code, to read:~~

14    ~~6717.7.— The division may, at any time, upon a showing of good~~  
15    ~~cause and after notice and an opportunity to be heard, revoke or~~  
16    ~~suspend a lead-related construction work registration issued by~~  
17    ~~the division.~~

18    ~~SEC. 7.— Section 6717.9 is added to the Labor Code, to read:~~

19    ~~6717.9.— The program to register employers and contractors~~  
20    ~~who perform lead-related construction work shall be funded solely~~  
21    ~~from the funds in the Lead Contractor Registration Fund. To the~~  
22    ~~extent possible, the division shall consolidate the administration~~  
23    ~~of the program to register employers and contractors who perform~~  
24    ~~lead-related construction work with the administration of the~~  
25    ~~program to register persons doing asbestos-related work.~~